IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

OASIS RESEARCH, LLC, Plaintiff, v. AT&T CORP., et al, Defendants.	§ § § § § § § § § § §	Case No. 4:10-cv-00435-MHS-ALM

JOINT STIPULATION FOR ENTRY OF PROTECTIVE ORDER

The parties, through their undersigned counsel, hereby stipulate and agree to the Court's entry of the proposed protective order filed herewith (the "Proposed Order"), with the exception of the following disputed provision.

One provision in the Proposed Order remains in dispute. This provision is found in Paragraph 35 and is shown by a redlined insert. Defendants propose this language in connection with potential re-examination of the patents-in-suit. Plaintiff objects to this language. The parties' respective positions on this issue are provided below. The parties respectfully request a ruling by the Court.

Defendants' position:

Defendants believe that Plaintiff's attorneys who access technical materials designated "Highly Confidential – Attorneys' Eyes Only" should not be permitted to participate in reexamination proceedings. It would be impossible for those attorneys to separate their own ideas from the information obtained from highly confidential materials, as necessary to prevent

inadvertent disclosure. This issue was recently addressed in the Northern District of Ohio, which held as follows:

> Upon review, the Court finds that attorneys who access AEO technical materials will not be permitted to participate in reexamination proceedings. The Court finds that it would be nearly impossible for attorneys viewing technical AEO materials to separate out the information obtained from such materials with their own ideas. As a result, there is a high risk for inadvertent disclosure. This is particularly true when the reexamination proceedings relate to the patents-in-suit. Attorneys involved in patent litigation spend a great deal of time immersed in the technical aspects of the claims at issue. This time, together with access to AEO technical materials, further exacerbates the risk of inadvertent disclosure.

Datatrak Int'l, Inc. v. Medidata Solutions, Inc., 2011 U.S. Dist. LEXIS 92886, *9 (N. D. Ohio, Aug. 2011).

AT&T requests oral argument in the event the Court is not inclined to include the disputed language regarding reexaminations in the Patent Prosecution bar since AT&T proprietary technical information for three separate products (Synaptic Storage as a Service, Backup and Go, and Remote Vault) would be at risk of an irrevocable disclosure to potential reexam counsel.

Plaintiff's position:

Defendants have failed to carry their burden of showing good cause for the issuance of the reexamination bar that they seek to impose unilaterally on outside counsel for Oasis, but not on any other outside counsel in the case. *Cf. In re Deutsche Bank Trust*, 605 F.3d 1373, 1378 (Fed. Cir. 2010) ("A party seeking a protective order carries the burden of showing good cause for its issuance. The same is true for a party seeking to include in a protective order a provision effecting a patent prosecution bar."). Because the patents-in-suit are not currently in reexamination, Defendants' request is premature and should be denied as such. Defendants'

additional provision also is not necessary because all parties' designated information is protected under the current provisions of the protective order, specifying that designated confidential information may be used only for purposes of the current litigation.

Moreover, should a reexamination be filed, Defendants' requested provision creates an undue burden on Oasis that would require Oasis to defend its patents in two separate venues with two teams of attorneys who are not permitted to coordinate their efforts. For that reason, courts in the Eastern District of Texas have specifically permitted outside litigation counsel to communicate with and advise reexamination counsel. *See, e.g., Mirror Worlds, LLC v. Apple, Inc*., 2009 WL 2461808 (E.D. Tex. Aug. 11, 2009); *Document Generation Corp. v. Allscripts, LLC*, 2009 WL 1766096 at *2 (E.D. Tex. June 23, 2009).

To the extent the Court is inclined to grant Defendants' reexamination bar, Oasis respectfully requests oral argument on this issue because granting such a bar will deprive Oasis of its right to choose its own counsel to the tactical advantage of Defendants.

Dated: December 1, 2011

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of the foregoing document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this 1st day of December, 2011.

/s/ Theodore G. Baroody